3/1/02

Jim Pickrell,
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Chairman Michael Powell
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

ECFS Submission

Re: CC Docket 02-33

Dear Chairman Powell,

As president of a small local Internet Service Provider based in California, and as president of the California ISP Association, I am seriously concerned by recent House approval of the "Tauzin Dingle" bill, and of recent attempt to achieve the same results through the back door by asking the FCC to remove competitive requirements on high speed digital services.

Free market and competition is what our nation was built on. Allowing SBC and other telephone monopolies to manipulate the regulatory framework to get favors for themselves is a bad choice. SBC may call it "Broadband Freedom" but for us it's "Broadband Out Of Business."

As small locally owned businesses, ISP's depend on access to local lines to provide connections to customers. We provide our own network, our own equipment, our backbone access, email, websites, and support. But without that last mile of wire, we can't reach the customer. If you take that away from us, we're closed.

When we first started offering Internet access in 1994, SBC and the other phone companies had no interest. They are latecomers, but they are trying to leverage their monopoly control of the phone lines into a monopoly on Internet.

You can't imagine what it is like to listen to regulators calmly discuss regulating us out of business. It's a horrible experience to stand by helplessly, knowing that at any moment, the FCC could shut us down.

Rather than rant on endlessly about the merits of competition, and the regulators role, I'm going to turn to others more expert than myself, with a number of quotes from Milton Friedman, Nobel prizewinner in Economics, as well as articles from the National Review and the LA Times which are attached at the end of this letter.

Milton Friedman with the assistance of Rose D. Friedman, Capitalism and Freedom, The University of Chicago Press, Chicago, 1982

> "Probably the most important source of monopoly power has been government assistance, direct and indirect." (p. 129)

Estes Kefauver, In a Few Hands. Monopoly power in America, Penguin, Harmondsworth, 1966

> "[Thus] it is not surprising that the records of the regulatory agencies have sometimes been disappointing. Instead of developing policies making the industry more responsive to public needs, they too often spend their energies protecting fixed investments, freezing obsolete modes of doing business, excluding new entrants from the industry, and perpetuating the existence of high-cost operators. In a word, the regulated take over the regulators, and for all practical purposes, monopoly comes to be elevated to the position of high public policy."

Stephen Moore, Train Wreck - No Way to Run a Railroad - National Review Online, February 8, 2002

> "Monopolies provide lousy service, with few consumer choices, and ever-rising costs."

Milton Friedman and Rose Friedman, Free to Choose, Penguin Books, Harmondsworth, 1983

> "A monopoly can seldom be established within a country without overt and covert government assistance in the form of a tariff or some other device." (p. 76)

F. A. Hayek, The Road to Serfdom, Routledge & Kegan Paul, London, 1986

> "It should be noted that monopoly is frequently the product of factors other than the lower costs of greater size. It is attained through collusive agreement and promoted by public policies." (p. 33 - from monograph n. 21, 1940)
>
> "Our freedom of choice in a competitive society rest on the fact that, if one person refuses to satisfy our wishes we can turn to another. But if we face a monopolist we are at his mercy. And an authority directing the whole economic system would be the most powerful monopolist conceivable." (p. 69)
>
> "Private monopoly is scarcely ever complete and even more rarely of long duration or able to disregard potential competition. But a state monopoly is always a state-protected monopoly - protected against both potential competition and effective criticism." (p. 146)

Wilhelm Röpke, Civitas Humana. A human order of society, William Hodge & Company, London, 1948

> "Very possibly there would be few monopolies in the world today were it not the state for a variety of reasons had exerted the whole weight of its authority, its laws and of its conscious or unconscious economic policy in favour of monopoly and against the natural gravitation to competition." (p. 170)

Both left and right agree: competition is good. Monopolies are bad.

Rather than converting the wildly competitive internet into a two company shop, the FCC should be looking for ways to open up broadband to more competition. Enforcement of existing laws is important, and right now it's missing. Penalties for noncompliance are so small that they are merely an acceptable cost of doing business.

The California ISP Association plans to file complaints with enforcement about pricing and policies within SBC territory. The situation now is completely impossible. When you add in the back end costs with line charges, the total often exceeding more than $100 for lines which are only one component of a DSL service that retails for $49.95. There's no way you can make up a loss like that on quantity.

The result is that companies like ours, which depends on DSL for 45% of its revenue, have been completely pushed out of the market in SBC territory. Which is a terrible situation, considering that SBC has a total 100% lock on phone lines in 90% of our state.

What this country needs is more competition, not less.

Please read the attached comments and two articles.

Thanks,

Sincerely,

Jim Pickrell
President
Brand X Internet LLC
www.brandx.net
President, California ISP Association
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James K. Glassman
On NRO Financial

Bungling Unbundling

Tauzin-Dingell would discourage new telecom investment.

Mr. Glassman is editor of TechCentralStation.com.

December 11, 2001 8:00 a.m.

The House leadership has shown little enthusiasm for the pet project of Reps. Billy Tauzin (R., La.) and John Dingell (D., Mich.), a bill that would gut the 1996 Telecommunications Act, which was responsible for a huge capital-spending boom in the late 1990s. But, kicking around for nearly two years, the bill is set to come to the floor this week.

Tauzin, after all, is chairman of the Commerce Committee, and the lack of a vote was getting awfully embarrassing. But congressional etiquette, in this case, could produce terrible economic consequences.

The Tauzin-Dingell bill, as it's called, would entrench and expand the monopoly power of the four Bell companies, kill off competitors, and slow the roll-

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out of broadband technology —
fast connections to the Internet, so vital to the economy.

The foundation of the act was the requirement that local Bell monopolies "unbundle" their networks and let anyone with courage and capital enter the market to sell communications services to consumers. The idea was that competition, not monopoly, would lead to innovation. Unfortunately, the Tauzin-Dingell bill destroys the unbundling requirement.

Why? Tauzin-Dingell advocates argue that broadband has slowed because the Bells have no incentive to upgrade their facilities if they must allow competitors to connect with their systems. This argument is utterly fallacious, and now, just in time for the vote, a new study by the prestigious Organization for Economic Co-operation and Development (OECD) shows why.

In fact, the OECD study proves a case that's the precise opposite of what the Bells are claiming. The study shows that unbundling leads to new investment by both competitors and incumbents. It's logical to assume that a reduction or elimination of unbundling — which is what the Bells want — will bring investment to a halt by both.

The study, titled "The Development of Broadband Access in OECD Countries," examines the experience of the 26 industrialized OECD countries, including the U.S., that have passed unbundling requirements such as those in the 1996 telecom act. The OECD found, contrary to the assertions of Tauzin-Dingell advocates, that an enormous investment *boom* resulted from unbundling, or opening, local telecom networks.

"Initiatives to open the local loop are viewed by most OECD governments as being fundamental to promoting a fast rollout of broadband services," says the report. "To date the major criticism of unbundling or line sharing [is] that such policies allegedly discourage investment in new infrastructure. No evidence has been forwarded to substantiate that claim."

Of course not — since there *is* no such evidence.

The study continues: "By way of contrast, there are huge investments being made by new entrants in local access markets, where unbundled elements are available, to provide broadband services. These investments take the form of facilities that link unbundled elements to provide

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broadband services and in alternative infrastructures that do not use unbundled elements."

The OECD found that, instead of discouraging new investment, an unbundling policy encouraged it. In fact, such a policy is the best way to get competitors to build out their own infrastructure - and "in the long run infrastructure competition is the best way to develop broadband services." Now, this may sound counter-intuitive: competitors who can tap into an incumbent's network are most likely to invest in their own infrastructure. But it is what the OECD found, and it makes sense — they can't get their businesses launched without having access to unbundled elements, but, in the end, they need their own infrastructure to win customers.

The report is emphatic: "To suggest that new entrants will not invest in their own infrastructure is erroneous."

And the report adds: "Nor does unbundling deter incumbents from investing in upgrading networks."

This is no mere speculation. It is a report that studies the available evidence in more than two dozen countries. And it absolutely refutes the main argument that the Bells are making on Capitol Hill.

> · The Bells say that unbundling gives the CLECs a free ride, and it deters the CLECs from investing in their own facilities. That is "erroneous," according to the OECD.
>
> · Next, the Bells say that they themselves are deterred from investing in upgrading their networks if they have to share them (for a price, of course) with the CLECs. That's not true either, says the OECD.

In other words, the basic economic argument of Tauzin-Dingell is dead wrong.

The investment boom, the OECD study indicates, comes from two factors. First, feisty competitors see that they have a foot in the door and rush in to compete with the old monopolies. Second, the monopolies themselves feel compelled to invest in order to keep up with the entrants.

What ensues is a virtuous cycle that is great for consumers, and raises the quality of service, expands the breadth of choices, and lowers costs as well. A typical

OECD example is Germany, which, while being a leader in unbundling, has an incumbent telecommunications carrier (Deutsche Telekom) that is upgrading its facilities at a rapid pace.

As the OECD puts it: "There is no evidence that unbundling has slowed investment in new infrastructures or innovation. In OECD countries that have introduced unbundling, investment is proceeding apace."

But what is great for consumers is bad for monopolies. They would rather keep the entrants away, and continue to charge households high prices for old-fashioned telephone service. Hence, the Tauzin-Dingell bill, which attempts to set the clock back to the good old days of regulated monopoly.

Between the lines, the study also suggests something of a puzzle. Unbundling has led to unprecedented waves of investment spending, but lately that spending has fizzled out in the United States. What's different about the U.S.? Clearly, there can be only one answer. In the U.S., a particularly aggressive monopoly presence has attempted to litigate and legislate the new entrants out of existence.

The Bells are great at this kind of game. Their proficiency is the reason that legislation as dangerous as Tauzin-Dingell is scheduled to come to the floor. As Bob Metcalfe, the legendary high-tech entrepreneur, put it recently, "The core competency of the regional phone companies has become lobbying and litigation."

Meanwhile, the U.S. consumer and the U.S. economy suffer.

The Bells have to answer the ringing affirmation of unbundling contained in the OECD study. But what can they possibly say? If I were a member of the House, I wouldn't vote for Tauzin-Dingell until I got a straight answer.

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March 1, 2002

EDITORIAL

Phone Monopolists, Again

In 1996, members of Congress virtually wrapped themselves in the American flag while passing a telecommunications bill that they said would help the little guy. What a shock that the opposite happened. Consumers saw their phone, cable and high-speed Internet rates increase, and existing providers strengthened their monopolies.

Now, the same ruse has returned. On Wednesday, the House of Representatives passed the proposed Internet Freedom and Broadband Deployment Act, which would relax the already loose regulations of the 1996 Telecommunications Act. Telephone companies would no longer be required to let competitors use their copper phone lines and other facilities to offer high-speed Internet access.

The bill's principal author, Rep. W.J. "Billy" Tauzin (R-La.), claims that his legislation would spur the local phone companies to make the costly investments needed to bring broadband to poor and rural areas. In fact, the legislation would essentially let the Baby Bells freeze out competing Internet service providers from digital subscriber line, or DSL, services. That would lead to fewer choices and higher prices for broadband subscribers. There would be no credible price competition. No small and innovative Internet service providers with creative ideas about, for instance, audio- and videoconferencing. As Sen. Ernest F. Hollings (D-S.C.) bluntly put it, the bill is a "blasphemy ... a total fraud that will extend the power of monopolists rather than promote competition."

Many of the legislators who took to the House floor to support or oppose the bill Wednesday tripped over its highly technical terms--their orations seemingly motivated less by an eagerness to help their constituents than by a desire to court the bill's proponents (mainly the Baby Bells) or its opponents. Among the foes are small Internet service providers as well as some big ones like AT&T and Sprint. Both sides together have given $32 million in campaign contributions to members of Congress since debate on the bill began three years ago, according to the nonprofit Center for Responsive Politics.

Neither Tauzin nor his opponents could exactly be called friends of the consumer on this issue. But one thing is sure: Despite Tauzin's overheated contention that his bill is all "about jobs ... about [giving] us all a chance to enjoy this amazing technology," the legislation is a perfect child of the 1996 Telecommunications Act. It will not help consumers, promote competition or spur innovation.

Senate Majority Leader Tom Daschle (D-S.D.) should make sure the bill does not leave the Senate alive. FCC Chairman Michael K. Powell should also resist lobbying pressure to relax broadband regulation through backdoor means if the legislation fails.

*

To Take Action: Senate Majority Leader Tom Daschle, (202) 224-2321 or tom_daschle@ daschle.senate.gov. FCC Chairman Michael K. Powell, (202) 418-1000 or mpowell@fcc.gov.